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David H. Parker

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EXAMINER

CARIASO, ALAN B

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/003,610

Applicant(s)

PARKER, DAVID H.

Examiner

Alan Cariaso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of group II directed to claims 8-21 in Paper No. 7 is acknowledged. In regards to applicant's note that claims 1-7 were cancelled with filing of this divisional application, the record shows that no such preliminary amendment to cancel claims 1-7 was ever filed in this divisional application. It will be noted that at least claims 1-7 are intended to be canceled and will be done so if an examiner's amendment is required. Otherwise, applicant may cancel claims upon response to this Office Action.

2. Claims 1-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected recharging device, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

3. Applicant's election with traverse of Group II (claims 8-21) in Paper No. 7 is acknowledged. Applicant's statements regarding the traversal have been considered. Restriction between group II (claims 8-21) and group III (claims 22-26) has been withdrawn. Claims 8-26 have been examined with the results of the Office Action state below.

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "17" has been used to designate both a threaded front

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opening of the right angular housing 11 of the flashlight (fig.3) and a protruding aperture of the bracket extension assembly (22 - figs. 27 & 29). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "29"-fig.3. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "203" and "323" have both been used to designate the latch. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "203"-fig.26 and "17"-fig.27 have both been used to designate the rearward protrusion of the respective top and side views of the bracket extension assembly 22 in figs. 26 & 27. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

8. The disclosure is objected to because of the following informalities:
9. The following parts are objected for using similar exchanged terms to describe different parts of the invention: "boot actuator 16" (pg.4, line22), "switch boot 18" (pg.4, line 24), and "switch button 18" (pg.7, line 8); "battery casing 10" (pg.4, line 17), "battery pack 300" (pg.7, line 5), "battery housing 300" (pg.7, line 14), "battery pack 300" (pg.7, line 23). Repeating terms should have consistent terminology. Appropriate correction is required.
10. Page 7, lines 10-11, the following phrase is grammatically incorrect: "In actuator 16 fits around the stem 324 which protrudes from the aperture 17 and is covered by the boot actuator 16". Appropriate correction is required.
11. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: (a.) the element being spring-loaded such that when the battery pack is correctly located in the battery housing the element fits in the aperture (claim 9); (b.) a grip sleeve or two separable grip sleeves being located at opposite sides of the battery housing (claims 16 and 17).

***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 9-13, 18-21 and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
14. Claim 9, line 2, "the battery pack" lacks antecedent basis.
15. Claim 10, line 1, "the element" lacks antecedent basis in regards to claim 10's alternative dependency to claim 8.
16. Claim 12, line 2, "the housing" is indefinite as being either "the battery housing" or the disclosed right angular housing 11.
17. Claim 18, line 2, "the base" lacks antecedent basis.
18. Claim 20, line 2, "the button element" and "the battery pack" lack antecedent basis.
19. Claim 21, line 1, "the aperture" is indefinite as being the same as or different from the preceding "recess" of claim 20. Otherwise, it lacks antecedent basis.
20. Claim 24, line 2, "the elongated structure" has no antecedent basis.
21. Claim 25, lines 2-3, the subject "the structure" is indefinite as lacking a structural relationship with the "mating formation in a recharger".

***Claim Rejections - 35 USC § 102***

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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23. Claims 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by HASENBERG et al (US 5,465,196).

24. HASENBERG discloses a battery housing (12) having a first opening (25); a lamp bulb (17); an electric connection (40) between the battery housing (12) and the lamp bulb (17); a closure (30) for the opening of the battery housing (12), the closure (30) being in a tail cap (27,28) mounted in the battery housing (12), the closure (30) being inherently connected with a rechargeable battery such that when the battery (30) is located in position (fig.1) in the battery housing (20) the battery housing is closed; including an aperture (recess adjacent 29-fig.5) receiving an element (37,38) connected with the battery pack (30), the element (37,38) being spring-loaded (39) to fit in the aperture (29) in the normal position and wherein finger pushing action (onto 36, col.3, lines 64-65) converse to a biasing from the spring action (39) causes the battery pack to be released from its position in the battery housing (12); wherein the base of the battery housing (20) includes contacts (26).

25. In regards to the phrase in claim 11 "for location with contacts on a recharger for the battery", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

26. Claims 8, 12, 13, 16 and 18-26 are rejected under 35 U.S.C. 102(b) as being anticipated by SHARRAH et al (US 5,871,272).

27. Regarding claims 8, 12, 13, 16 and 18-21, SHARRAH discloses a flashlight comprising: a battery housing (20) having a first opening (col.3, lines 48-49); a lamp bulb (285,286); an electric connection (col.3, lines 18-31) between the battery housing (20) and the lamp bulb (285); a closure (100,102) for the opening of the battery housing (20), the closure (100,102) being in a tail cap (28,90) mounted in the battery housing (20), the closure (100,102) being connected with a rechargeable battery (120) such that when the batteries are located in position (fig.11) in the battery housing (20) the battery housing is closed (fig.11); wherein the lamp bulb (285,286) is located in the housing mounted at an angle that is substantially right-angular (fig.22) relative to the axial direction of the axis of the battery housing (20); wherein at least portion of the battery housing (20) includes a grip sleeve (87-fig.2, col.4, lines 16-20); wherein the battery housing (20) includes an indentation (96-fig.2, col.7, line 38) located towards the base (90) of the housing (20-fig.1), the indentation (96) being for mating engagement with a locking lip (437-fig.21) to locate the flashlight (10-fig.19) in a recharger device (400, col.7, lines 29-48); wherein the indentation (96) extends substantially transversely (annular) across a face of the base and is located relatively closely to the foot (90) of the flashlight (10); wherein a recess (30-fig.2, col.4, lines 23-25) for receiving the button element (40) on the battery pack (20) is located on an opposite face of the battery housing and is located preferably at a location relatively closer to the top of the battery

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housing (20-fig.2); wherein the aperture (242-fig.8) at the top (200) of the battery housing is located substantially opposite to a larger aperture (230-fig.2) in the battery housing, the larger aperture (230-fig.2, 290-fig.11) being for receiving a lens configuration (295-fig.11 or 298-col.7, line 25).

28. In regards to claims 22-26, SHARRAH discloses a rechargeable battery pack (100) including batteries (120) in relative side-by-side relationship (figs.2,11), an extension (screws 135,136-figs.2,11) from the batteries connecting the batteries (120) in a battery housing (20) in a releasable manner, contact means (straps 118) from the batteries (120) for permitting recharging of the batteries in a recharger (col.5, lines 6-19); wherein the extension (135,136) includes the electrical contact means (118); a carrier (400,410,415-figs.19-21) receiving a rechargeable battery pack (100), the carrier (415) being elongated to receive the elongated structure (102) of the pack (100) and to locate the structure in a recharger (400); wherein the elongated structure (102) includes an indentation (104 or 96) permitting releasable anchorage of the battery pack (102) and the structure (102) with a mating formation (437) in a recharger (400); wherein there are at least two batteries (120), the batteries (120) being located preferably in side by side relationship.

### ***Claim Rejections - 35 USC § 103***

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHARRAH et al (US 5,871,272) in view of ZELINA, JR (US 4,605,993).

Claims 14 and 15 recite the battery housing being substantially rectangular in cross section having cut-off or rounded corners when viewed from the base not disclosed by SHARRAH. ZELINA teaches a flashlight battery housing (11-fig.1) having a rectangular cross-section that includes rounded corners (fig.2) for the purpose of placing the battery housing onto a recharger unit in four different positions (col.4, lines 2-10) and the rounded corners minimize potentially harmful sharp edges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flashlight battery housing of SHARRAH et al to include the type of corner-rounded rectangular cross-sectional shape as taught by ZELINA JR in order to allow plural angular positioning of the battery housing relative a recharger unit while allowing smooth handling or holding of the flashlight battery housing.

31. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over SHARRAH et al (US 5,871,272) in view of MONTELEONE et al (US 5,904,414).

Claim 17 recites two separable grip sleeves being located opposite sides of the battery housing not disclosed by SHARRAH. MONTELEONE teaches facets (94-figs. 3-5) located on opposite sides of a battery housing (12) for the purpose of allowing gripping of at least a thumb and hand of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the grip sleeve of

the flashlight battery housing of SHARRAH et al to include the type of oppositely located grip sleeves as taught by MONTELEONE et al in order to facilitate gripping of the thumb and hand of the user.

### ***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. HEINE (US 3,643,083) shows a recharging carrier unit (fig.6) that has a receptacle that receives an elongate battery housing (57) against a biasing element (55). WETMORE (US 3,809,882) shows a recharging carrier unit (10) that receives a battery casing (12). MCLEAN (US 5,373,427) shows a flashlight that includes a headlamp portion at a right angular position relative to a longitudinal axis of a battery-holding handle (22), an opening (58-fig.4) receiving an insertable battery pack (fig.9), the battery pack including side-by-side batteries (82-fig.10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (703) 308-1952. The examiner can normally be reached on M-F (9:00-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Alan Cariaso  
Primary Examiner  
Art Unit 2875

AC  
March 18, 2003